

applied with a due respect to legal regulation of specific objects and activities stipulated in the law.

## **ON THE QUESTION OF THE RESALE RIGHT AND RIGHT TO REMUNERATION AS PROPERTY COPYRIGHTS**

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In most cases, the creators of copyrighted works create their works to obtain certain benefits for themselves or their loved ones. Therefore, the state should provide an opportunity for authors to receive this benefit. To do this, law recognizes author's economic rights, important in its significance. But the current legislation does not provide an exhaustive list of property rights, therefore also may be some ambiguity.

The relevance of this research is that the property rights of the author guarantee for creator not only the possibility of obtaining economic benefits of the work, but also guard intellectual and personal relationship with the work that is essential to protect the rights of the author in a modern democratic society.

The main objective of the research is to analyze the legislative norms that regulate the scope of the property rights of the author, as well as the interpretation of these rules in the light of theoretical research.

Author's property rights are realized in the exclusive rights to the product. The exclusive right means that any person other than the one that owns the copyright or related right shall not use work, not having a permit, except as prescribed by law. According to Article 440 of the Civil Code of Ukraine (hereinafter - CCU) author has the exclusive right to use the work in any form and in any manner that does not conflict with applicable law. Exclusive property rights allow the author or the author's heirs control the use of works by third parties.

To understand what rights belong to the author's property rights, we propose to apply to classifications of intellectual property rights, which are found in legislation and in the national literature. Under Article 440 of the Civil Code proprietary copyrights shall be:

- 1) the right to use the work;
- 2) the exclusive right to permit to use the work;
- 3) the right to prevent unlawful use of the work, including prohibition of such use;
- 4) other proprietary rights of intellectual property established by the law.

It remains an open question as to "other proprietary rights of intellectual property" because the law does not provide exclusive list of them. Art. 445 and Art. 448 CCU points to such intellectual property rights as the author's right to reimbursement for his work use (hereinafter - the right to remuneration for the use) and the author's right in the sales share of the work's original (hereinafter - the resale

right). This legislative position does not exclude the inclusion of these rights to "other proprietary rights of intellectual property established by law."

In the scientific literature, we are also seeing quite controversial opinions regarding the classification of intellectual property rights. Authors Hridochkin, Hridochkina and Leonova all property rights which belong to the author call exclusive and divide into two groups: general (property rights arising out of use) and special (right of access to the product, resale right). Authors Kulinich and Romanadze isolate from exclusive property rights specific property rights (the resale right, the right of access) as the property rights of authors of works of art. Instead Ivanyuk shares all intellectual property rights into 3 groups:

- moral rights (right of authorship, the right to name author's, the right to immunity);
- exclusive property rights (the right to use intellectual creations in its sole discretion, the right to allow (forbid) other persons to use the result of intellectual activity);
- other intellectual property rights (right to remuneration for official result of intellectual activity, the right to obtain security document, resale right, the right of access in relation to works of art).

The same classification give Cherevko and Bondarenko.

As we see the distinction between those rights are ambiguous. Article 15 of the Law of Ukraine "On Copyright and Related Rights" indicates that the property rights of the author are exclusive. But can we assert about exclusiveness of property rights as resale right or right to remuneration? We propose to consider the legal nature of these rights to find a comprehensive list of property rights of the author for further study.

The required signs of exclusive rights are: first, the material nature, secondly, all rights belong only to the author or his assignee, thirdly, the ability to transfer those rights to other subject of copyright, fourthly, they are limited for a period prescribed by law.

In fact, the resale right has a material nature. But it cannot be alienated by the author himself or by his heirs to others. Also in literature has repeatedly emphasized that the exclusive property rights are absolute. Agreeing with this position, it should be emphasized that intellectual property rights under Article 440 of the Civil Code, are absolute, because directed on indefinite range of subjects (one and all). Is it possible to say that the author's right to remuneration also applies to everyone and therefore is absolute? Obviously, is not. Thus, these differences indicate that the right to remuneration and the resale right cannot be considered as one of the rights referred to in paragraph 4 of Article 440 of the Civil Code of Ukraine.

Summing up the research of this topic we can conclude that Ukraine has the necessary legal base corresponding, in general, the latest international standards. (For example, the resale right implemented by Release Right Directive .This right, often known by its French name *droit de suite*, appears in the Berne Convention for the Protection of Literary and Artistic Works.) However, the interpretation of legislative norms needs further study, because it will provide adequate security and protection of

copyrights and legally possibility to get some wealth through exclusive use of results of intellectual activity.

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## LIABILITIES FOR ENDANGERING INDIVIDUAL PROPERTY OR LEGAL ENTITY PROPERTY

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The relevance of the chosen topic confirmed that after the proclamation of independence Ukraine faced the task of bringing national legislation into the line with the social relations that are in the process of reform. The main role in these transformations was given to the civil law, the purpose of which is to determine the legal status of the individual in society, establishing bases of its relations with the state regulation of property relations, that is all that is the foundation of civil society and the rule of law.

Therefore, the adoption of 16 January 2003 of the Civil Code of Ukraine was another step towards the construction of Ukrainian democratic, social state of law. Civil Code ranks among codes a special place because it is based on a fundamentally